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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Deane Gardner

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EXAMINER

PHAN, JOSEPH T

ART UNIT

PAPER NUMBER

2614

MAIL DATE

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05/17/2007

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/757,241

**Applicant(s)**

GARDNER ET AL.

**Examiner**

Joseph T. Phan

**Art Unit**

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/08/07</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 12 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 12 recite "*storing in a repository of personal data maintained by, or accessible from, the network server, personal data from the user;*" This phrase is unclear as it is not known if the "storing" is maintained by "the network server" or the "personal data from the user" as the multiple commas make the grammar confusing.

Separating the commas make the claim separately read as "storing in a repository of personal data maintained by personal data from the user" which is further confusing.

This confusion makes the claims indefinite. Appropriate clarification and/or correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 1-22 rejected under 35 U.S.C. 103(a) as being unpatentable over Teller et al., Patent #6,605,038 in view of Murakami, JP 05252068.**

Regarding claims 1 and 12, Teller teaches a method for integrating personal data capturing functionality into a portable wireless communication device(col.7 lines 49-65) and for analyzing and supplying feedback information to a user, the method comprising: receiving personal data of a user by at least one personal parameter receiver, capturing the personal data in the wireless communication device(col.7 lines 49-65); and periodically transmitting the personal data from the portable wireless communication device to a network server over a wireless network(col.7 lines 12-38 and col.11 lines 57-67); storing in a repository of personal data maintained by, or accessible from, the network server, personal data from the user(col.10 lines 25-49 and col.12 lines 1-4); analyzing the personal data to generate feedback information for the user; and

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posting the feedback information to a web site that is accessible to the user(col.10 lines 25-49 and col.13 lines 31-67).

Teller does not specifically teach the personal data comprising step data corresponding to a number of steps counted during an activity of the user.

In the same field of endeavor, Murakami teaches of a personal communication device which is able to receive personal data of a user and wherein the personal data comprises step data corresponding to a number of steps counted during an activity of the user, (abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Teller by counting the number of steps counted during an activity of the user as taught by Murakami so that the user can be alerted or feedback analyzed when the number of steps has been counted during an exercise(Teller col.9 lines 6-26). It is noted that Teller discloses exercise activities(col.4 line 20 and col.9 lines 6-16) and walking with a pedometer is an old and well-known form of exercise as taught by Murakami.

Regarding claims 2 and 13, Teller in view of Murkami teaches the method of claims 1 and 12 wherein the at least one personal parameter receiver is contained in a personal data capture device attachable to the portable wireless communication device(Fig.1).

Regarding claims 3 and 14, Teller in view of Murkami teaches the method of claims 1 and 12 wherein the at least one personal parameter receiver is contained in the portable wireless communication device(Fig.1).

Regarding claims 4 and 15, Teller in view of Murkami teaches the method of claims 1 and 12 wherein analyzing comprises analyzing the personal data according to health and/or fitness of the user such that the feedback information contains information pertaining to health or fitness of the user(col.9 lines 6-26).

Regarding claims 5 and 16, Teller in view of Murkami teaches the method of claims 1 and 12 wherein posting comprises posting the feedback information and the personal data in a form comprising one or more of: graphs, charts, tables and map overlays the personal data is transmitted to the network server automatically(Fig.7 and col.15 lines 54-60).

Regarding claims 6 and 17, Teller in view of Murkami teaches the method of claims 1 and 12 wherein said receiving, capturing, periodically transmitting, storing, analyzing and posting are performed with respect to personal data for each of a plurality of users and their corresponding wireless communication device personal data is transmitted to the network server upon receiving a user request(col.7 lines 16-18).

Regarding claims 7 and 18, Teller in view of Murkami teaches the method of claims 6 and 17 and further comprising comparing personal data for one user with personal data for at least one other user wherein the personal data comprises physical data and biometrical parameters of the user(fig.6-11).

Regarding claims 8 and 19, Teller in view of Murkami teaches the method of claims 1 and 12 further comprising:  
transmitting the feedback information to the user's wireless communication device and displaying the feedback information on the portable wireless communication

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device to the user(col.7 lines 49-55).

Regarding claims 9 and 20, Teller in view of Murkami teaches the method of claims 1 and 12 wherein analyzing further comprises generating for presentation to the user in the feedback information instructions from one or more of: a fitness instructor, physician, athletic trainer and nutritionist(Fig.6-11).

Regarding claims 10 and 21, Teller in view of Murkami teaches the method of claims 1 and 12 wherein posting comprises posting the feedback information to the web site that is accessible by the plurality of users comprising displaying at least a portion of the personal data to the user on a display of the wireless communication device(col.7 lines 50-52 and col.13 lines 30-40).

Regarding claims 11 and 22, Teller in view of Murkami teaches the method of claims 1 and 12 wherein posting comprises posting the feedback information and the personal data of the user to a personal web site of the user(col.13 lines 30-40).

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph T. Phan whose telephone number is (571) 272-7544. The examiner can normally be reached on Mon-Fri 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JTP  
May 10, 2007

*JTP*

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